IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 412 of 2007

Reserved on: 12.04.2007

Date of Decision:26.4.2007

Sudesh Kumar Petitioner

Versus

State of H P & others Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta,J.

Hon'ble Mr. Justice Surinder Singh,J.

Whether approved for reporting[1]?

For the petitioner : Mr. Ajay Mohan Goel, Advocate

For the respondents : Mr M S Chandel, Advocate General, With Mr Ram Murti Bisht, Deputy Advocate General.

SURINDER SINGH, J.

The petitioner is the owner of Stage Carriage Bus, bearing registration No. HP-53-9071, which had a valid route permit No.RP-20/R/2001 w.e.f. 20.7.2001 to 19.07.2006 (Annexure P-1), which was being plied from Palampur to Manali, later it was extended on 4.10.2001 from Palampur to Chaddhiar which was

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[1] Whether reporters of the Local papers are allowed to see the judgment?

to expire on 19.7.2006. The fitness of the bus was valid up to 10.7.2006, therefore, the petitioner applied for passing of his bus in question on 19.07.2006 and deposited requisite fee. The SRT was fully paid up to 31.07.2006.

According to the petitioner, he had made a request to respondent No.3 in the month of July, 2006 for granting permission for getting the bus passed but no response was made by him but on repeated requests, respondent No.3 is said to have retained the route permit for renewal in his office and issued a letter (Annexure P-3) to Motor Vehicle Inspector, Kullu, permitting the passing of the said vehicle, on the condition that all the codal formalities be completed before passing such permission shall be valid for one month from the date of its issue, but the bus was not passed. However, an oral objection was raised that since the vehicle in question was registered with the Registering & Licensing Authority, Kangra, the petitioner should get the same passed there. Again the petitioner contacted the office of respondent No.3, who informed him to bring the

bus for passing on 13th & 14th December, 2006 to Kullu but again it was not passed on the same pretext. Ultimately, the petitioner was compelled to send a notice (Annexure P-4) to respondent No.3 with all the details, upon which the bus was passed on 8.1.2007 and the petitioner vide Annexure P-5 informed respondent No.3 about passing of his bus and to renew his permit which was kept pending for want of fitness certificate. On repeated representations to respond, the respondent No.3 vide Annexure P-8 called upon the petitioner to deposit Special Road Tax (SRT), to which the petitioner objected as the route permit remain deposited with respondent No.3 for its renewal and certificate for fitness was delayed as aforesaid. When nothing was done, the petitioner filed the present petition for issuance of an appropriate writ declaring the communication dated 22.2.2007 (Annexure P-8) issued by respondent No.3 bad in law and that the petitioner is not liable to pay any Special Road Tax w.e.f. 31.7.2006 onwards, till the time route permit of the bus in question was renewed and direct respondent

No.3 to renew the route permit, so that the petitioner could ply his bus on the route granted to him.

The respondents in the reply raised a preliminary objection that the petition is not maintainable as the statutory remedies, as provided under Section 15 of the Himachal Pradesh Motor Vehicles Taxation Act, 1972 and Section 89 of the Motor Vehicles Act, 1988, were not exhausted before invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. On merits, in short, it is contended that the Regional Transport Authority can reject an application, under Section 81(4)(b) of the Motor Vehicles Act, 1988, on the ground that the petitioner is plying his vehicle without payment of tax due on such vehicle. According to them, the petitioner was in arrears of tax in respect of the bus in question. On 25.7.2006, Secretary, Regional Transport Authority, Kullu, had issued a notice (Annexure R-1) to the petitioner to deposit arrears of tax amounting to Rs.1,37,399/- in respect of his Bus No.HP-53-9071 which also

included arrears of other two buses of the petitioner. Subsequently, on 23.8.2006 renewal of the permit was alleged to have been refused vide Annexure R-2 in respect of Bus No.HP-53-9071, quoting default in deposit of installments of tax and the petitioner executed an indemnity bond (Annexure R-3) assuring to pay the balance. The petitioner is said to have deposited only Rs.45,000/-. The Government had revised the rates of penalty on SRT in July,2006 vide Notification Annexure R-4, vide which rates were reduced to 25% per annum of tax due w.e.f. 31.7.2002. Respondent No.3 on receiving the notification on 4.8.2006, qua the bus in question, adjusted the penalty on SRT and on 15.10.2006 passing permission was granted thereafter because he was holding the additional charge of RTO Kullu w.e.f. 16.10.2006 Renewal of the route permit was said to have been held up earlier because of SRT arrears.

We have heard the learned counsel for the parties and have gone through the relevant provisions of law which are attracted in the present case.

It is an admitted fact that SRT of the bus in question stands cleared up to 31.07.2006. The petitioner had applied for passing of the bus in the month of July, 2006 and had deposited the route permit with respondent No.3 for its renewal. The passing was delayed on account of the balance to be paid by the petitioner with respect to the bus in question. On payment of Rs.45,000/- and also coming into force of the notification dated 26.7.2006 the entire dues of the petitioner with respect to this bus were adjusted and cleared up but it is not understood why even thereafter passing permission was not accorded in the month of August, 2006 itself when according to respondent No.3 said notification was received in his office or in any case on or immediately after 16.10.2006 when he had taken the additional charge of RTO Kullu Further the respondents have failed to pin point any provision of law before us that the passing / fitness was required to be issued by the concerned Registering & Licensing Authority. If it was so, what prevented them to issue any

communication in writing to the petitioner, to this effect. Further there exists no provision in the H P Motor Vehicles Taxation Act, 1972 by which the respondent No.3 could with hold the renewal of the route permit of the bus on the basis of the arrears of SRT qua other buses of the same owner. If other buses were in arrears of SRT, he could have taken appropriate action permissible under the law against those buses. In this case the permit stood deposited with the respondent No.3 but the passing permission was not accorded as aforesaid. According to the petitioner he could not ply his bus for want of the fitness certificate and non-renewal of the route permit. The respondents have relied upon the bus Adda Parking Receipts issued during the disputed period. But in the absence of any cogent evidence of plying the bus in contravention of the provisions of the Act a presumption cannot be drawn on the basis of Annexures 5 to 7 (parking receipts) Since there was no order passed for rejecting the application for renewal, no appeal or revision under Section 89 or 90 of the Motor Vehicles

Act, 1988 could have been filed. Hence, non-filing of the appeal would not bar the jurisdiction of this Court.

In these circumstances in our considered opinion, the respondents are not authorized to charge SRT from the petitioner by virtue of sub section 2 of Section 14 of the Act w.e.f. 1.08.2006 till the date of issuance of the route permit.

Therefore, in these circumstances we are constrained to pass an order against respondents directing them to renew the route permit of the bus HP-53-9071 within a period of 15 days from today as per the provision of the Act, so as to enable the petitioner to ply his bus on the route granted to him. Accordingly, the petition stands disposed of. No order as to costs.

(Deepak Gupta),J.

April 26 ,2007 (Surinder Singh),J.
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